

Jose A. Alemar  
February 04, 2021

1

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF BRONX

3 SHAARILLE LINZY,

4 PLAINTIFF,

5 -against-

Index No.:  
23280/2020E

6 JOSE A. ALEMAR, AMERICAN UNITED  
7 TRANSPORTATION, INC. and AMERICAN UNITED  
TRANSPORTATION II, INC.,

8 DEFENDANTS.

9 -----X

10 DATE: February 4, 2021

11 TIME: 10:20 A.M.

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13  
14 EXAMINATION BEFORE TRIAL of the  
15 Defendant, JOSE A. ALEMAR, taken by the  
16 Plaintiff, pursuant to an Order, held via  
17 video conference, before Sanite Conserve, a  
18 Notary Public of the State of New York.  
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Jose A. Alemar  
February 04, 2021

2

1       A P P E A R A N C E S:

2  
3       ROSENBAUM & ROSENBAUM, P.C.  
4       Attorneys for the Plaintiff  
5       SHAARILLE LINZY  
6       100 Wall Street, 15th Floor  
7       New York, New York 10005  
8       BY:   ANDREW MEIER, ESQ.

9       ABRAMS FENSTERMAN  
10      Attorneys for the Defendants  
11      JOSE A. ALEMAR, AMERICAN UNITED  
12      TRANSPORTATION, INC. and AMERICAN UNITED  
13      TRANSPORTATION II, INC.  
14      488 Madison Avenue, 23rd Floor  
15      New York, New York 10022  
16      BY:   PETER OVERZAT, ESQ.

17  
18  
19      ALSO PRESENT:  
20      RAUL ZAMBRANO - SPANISH INTERPRETER

21                   \*           \*           \*

Jose A. Alemar  
February 04, 2021

3

221. UNIFORM RULES FOR THE  
CONDUCT OF DEPOSITIONS

221.1 Objections at Depositions

(a) Objections in general. No objections shall be made at a deposition except those which, pursuant to subdivision (b), (c) or (d) of Rule 3115 of the Civil Practice Law and Rules, would be waived if not interposed, and except in compliance with subdivision (e) of such rule. All objections made at a deposition shall be noted by the officer before whom the deposition is taken, and the answer shall be given and the deposition shall proceed subject to the objections and to the right of a person to apply for appropriate relief pursuant to Article 31 of the CPLR.

(b) Speaking objections restricted. Every objection raised during a deposition shall be stated succinctly and framed so as not to suggest an answer to the deponent and, at the request of the questioning attorney, shall include a clear statement as to any defect in form or other basis of error or irregularity. Except to the extent permitted by CPLR Rule 3115 or by this rule, during the course of the examination persons in attendance shall not make statements or comments that interfere with the questioning.

221.2 Refusal to answer when objection is made. A deponent shall answer all questions at a deposition, except (i) to preserve a privilege or right of confidentiality, (ii) to enforce a limitation set forth in an order of the court, or (iii) when the question is plainly improper and would, if answered, cause significant prejudice to any person. An attorney shall not direct a deponent not to answer except as provided in CPLR Rule 3115 or this subdivision. Any refusal to answer or direction not to answer shall be accompanied by a succinct and clear statement of the basis therefor. If the deponent does not answer a question, the examining party shall have the right to complete the remainder of the deposition.

Jose A. Alemar  
February 04, 2021

4

221. UNIFORM RULES FOR THE  
CONDUCT OF DEPOSITIONS

221.3 Communication with the deponent

An attorney shall not interrupt the deposition for the purpose of communicating with the deponent unless all parties consent or the communication is made for the purpose of determining whether the question should not be answered on the grounds set forth in section 221.2 of these rules and, in such event, the reason for the communication shall be stated for the record succinctly and clearly.

IT IS FURTHER STIPULATED AND AGREED that the transcript may be signed before any Notary Public with the same force and effect as if signed before a clerk or a Judge of the court.

IT IS FURTHER STIPULATED AND AGREED that the examination before trial may be utilized for all purposes as provided by the CPLR.

IT IS FURTHER STIPULATED AND AGREED that all rights provided to all parties by the CPLR cannot be deemed waived and the appropriate sections of the CPLR shall be controlling with respect hereto.

IT IS FURTHER STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that a copy of this examination shall be furnished, without charge, to the attorneys representing the witness testifying herein.

Jose A. Alemar  
February 04, 2021

5

1 R A U L Z A M B R A N O, a Spanish  
2 interpreter, solemnly swore to translate  
3 the following questions from English to  
4 Spanish and answers from Spanish to  
5 English:

6 J O S E A L E M A R, called as a witness,  
7 having been first duly sworn, through an  
8 interpreter, by a Notary Public of the  
9 State of New York, was examined and  
10 testified as follows:

11 EXAMINATION BY

12 MR. MEIER:

13 Q. Please state your name for the  
14 record.

15 A. Jose Antonio Alemar.

16 Q. What is your address?

17 A. 1329 Balcom Avenue, 2nd Floor,  
18 Bronx, New York 10461.

19 Q. Good morning, sir. My name is  
20 Andrew Meier, and I'm an attorney at  
21 Rosenbaum & Rosenbaum, and we represent a  
22 woman by the name of Shaarille Linzy, in  
23 association with a personal injury action  
24 arising from a motor vehicle accident that  
25 took place on December 5, 2019.

Jose A. Alemar  
February 04, 2021

6

1           A.     Okay.

2           Q.     We're here today to ask you  
3     some questions pursuant to a court order  
4     about your involvement in that incident on  
5     December 5, 2019. Now I know that you do  
6     speak some English, but we have a Spanish  
7     interpreter here today. So for purposes of  
8     today's deposition, I want you to pretend  
9     that you don't know any English; okay, sir?

10          A.     Okay.

11          Q.     Please allow me to ask all of  
12     my questions in English and allow Raul to  
13     translate my question from English to  
14     Spanish before providing an answer, and I  
15     ask that you provide your answer only in  
16     Spanish; do not answer in English, and then  
17     Raul will then translate the Spanish back  
18     to English for the record.

19          A.     Okay.

20          Q.     Now, your attorney, I'm  
21     assuming gave you some instructions about  
22     how to answer today's testimony, but let me  
23     just give you the same kind of ground rules  
24     on the record; okay, sir?

25          A.     Okay.

Jose A. Alemar  
February 04, 2021

7

1           Q.     We have a court reporter and  
2     she's typing down everything that is said  
3     to create a transcript. And that  
4     transcript is going to be used by all  
5     parties for the remainder of this lawsuit.  
6     So because she is typing up everything that  
7     is said, there are some ground rules that  
8     we have to make sure we follow to make her  
9     job as easy as possible.

10               First of all, she can only  
11     transcribe one person speaking at a time,  
12     so I ask that we all try our best to not  
13     talk over each other. I further ask -- I  
14     want to let you know that she can only take  
15     down verbal questions and responses. So  
16     while we all know what you mean here today  
17     when you shake your head up and down, that  
18     will not show up on the transcript, so you  
19     have to say, yes. Likewise, shrugs of the  
20     shoulders, uh-huhs, huh-uhs; we all know  
21     what you mean here today, but that's not  
22     going to show up on the transcript.

23               Also, I want to -- hopefully,  
24     we'll be done in about an hour or so, if  
25     all goes smoothly, so I want to -- also, I

Jose A. Alemar  
February 04, 2021

8

1 want to accommodate you at the same time;  
2 okay, sir?

3 A. Okay.

4 Q. So if at any point in time your  
5 phone rings and you need to take a phone  
6 call, text message you have to answer, you  
7 have to use the restroom, you want to speak  
8 with your attorney, I have absolutely no  
9 problem accommodating that, so long as  
10 there is not a question pending before we  
11 take a break. So if you want to take a  
12 break, you just have to answer the question  
13 and we can take as long a break as you  
14 need; okay, sir?

15 A. Okay.

16 Q. And finally, if you do not  
17 understand one of my questions, please let  
18 me know and I will be more than happy to  
19 rephrase it. But for purposes of this  
20 lawsuit, we all must assume that you  
21 understood my question if you answer it; is  
22 that fair, sir?

23 A. Okay.

24 Q. Are you ready to begin, sir?

25 A. Yes, sir.



Jose A. Alemar  
February 04, 2021

9

1 Q. Now, the address that you gave,  
2 how long have you resided at that address?

3 A. Approximately, December, three  
4 years.

5 MR. MEIER: Madam reporter, his  
6 name and address are on the record?

7 COURT REPORTER: Yes.

8 MR. MEIER: Thank you.

9 Q. Sir, were you employed back in  
10 December of 2019?

11 A. Yes, I was employed.

12 Q. And by whom were you employed  
13 in December of 2019?

14 A. I worked for Uber. I'm a taxi  
15 driver. I am self-employed.

16 Q. Sir, on December 5, 2019,  
17 specifically, were you a self-employed taxi  
18 driver that worked for Uber?

19 A. Yes. Correct.

20 Q. On December 5, 2019, did you  
21 also work for Lyft or just Uber?

22 A. I had Lyft as a part-time; I  
23 mean, to complete.

24 Q. Can you explain that further,  
25 sir?

Jose A. Alemar  
February 04, 2021

10

1           A.     Yes. I was affiliated with  
2 another company to complete; sometimes you  
3 would have to do that to complete the day.  
4 But I worked mostly with the other company.

5           Q.     Sir, just so I'm clear. On  
6 December 5, 2019, you were affiliated with  
7 Lyft; is that what you were saying?

8           A.     If I'm not mistaken, I think I  
9 was still affiliated with Lyft, but I do  
10 not know if I had it active at that time.

11          Q.     And sir, just so I'm clear.

12 You were also affiliated and worked for  
13 Uber on December 5, 2019; correct?

14          A.     Yes. Correct.

15          Q.     Okay. Now, other than Lyft and  
16 Uber, were you affiliated with any other  
17 employer, or ride-sharing app on December  
18 5, 2019?

19          A.     No. At that time, I was no  
20 longer working at another company.

21          Q.     On December 5, 2019, were you  
22 operating a motor vehicle as a taxi driver  
23 for Uber and/or Lyft?

24          A.     Exactly when it happened, I was  
25 going to start working an Uber.

Jose A. Alemar  
February 04, 2021

11

1 Q. So sir, just so I'm clear.  
2 When you're referring to when it happened,  
3 what do you mean by that?

4 A. I am explaining that when it  
5 occurred, I had just turned on the  
6 application. I had not worked yet.

7 Q. So sir, when you say "when it  
8 occurred," are you referring to an incident  
9 that occurred on December 5, 2019 involving  
10 a pedestrian?

11 A. Correct.

12 Q. And just so we're clear. Did  
13 the motor vehicle that you were operating,  
14 when you just turned on the Uber  
15 application, come in contact with a  
16 pedestrian on December 5, 2019?

17 A. Correct.

18 Q. Okay. How long had you been on  
19 the Uber application prior to coming in  
20 contact with a pedestrian on December 5,  
21 2019, approximately?

22 A. If I'm not mistaken, ten, 15  
23 minutes, or less.

24 Q. And when you were on the Uber  
25 application for ten or 15 minutes prior to

Jose A. Alemar  
February 04, 2021

12

1 the contact with the pedestrian on December  
2 5, 2019, can you describe what exactly you  
3 were doing?

4 And by that, sir, I mean, were  
5 you -- you were on the application, were  
6 you waiting -- had you been hailed by a  
7 potential customer, were you driving around  
8 with the application on, or something else?

9 A. I had just dropped off a  
10 friend. I don't know if she was taking the  
11 train or the bus. I was stopped at  
12 Westchester waiting for a call to come in,  
13 nothing came in, so I proceeded.

14 Q. And just so I'm clear. The  
15 Uber application was on the whole time for  
16 the ten or 15 minutes up until and  
17 including the moment your vehicle came in  
18 contact with the pedestrian, yes or no?

19 A. Yes.

20 Q. And is the Uber app on your  
21 cell phone, tablet, or something else?

22 A. On the tablet.

23 Q. On December 5, 2019, was that  
24 also the case; was the Uber application on  
25 your tablet?

Jose A. Alemar  
February 04, 2021

13

1           A.     If I'm not mistaken, yes, I had  
2     the tablet -- the tablet on. Times before,  
3     a few times, I had used the phone, but  
4     mostly, I have stayed on the tablet.

5           Q.     On December 5, 2019, how large  
6     was the tablet that you used the Uber  
7     application on?

8           A.     If I'm not mistaken, I think  
9     it's 8 inches. I'm not that familiarized.  
10    I had another one before, but I think, if  
11    I'm not mistaken, that it is 8 inches.

12          Q.     And back on December 5, 2019,  
13    in the ten to 15 minutes prior to coming in  
14    contact with the pedestrian, where was the  
15    tablet situated in the car when you were  
16    using the Uber application?

17          A.     I always keep it on the right  
18    side, the screen practically at the level  
19    of the radio.

20          Q.     On December 5, 2019, when you  
21    were on the Uber application, when you came  
22    in contact with that pedestrian, was the  
23    tablet on the dashboard, or something else?

24          A.     Yes, exactly where I told you,  
25    by the radio that is exactly on the

Jose A. Alemar  
February 04, 2021

14

1 dashboard of the car.

2 Q. Sir, how long did you drive for  
3 Uber prior to December 5, 2019?

4 A. With Uber, right now it's three  
5 and a half years. If we go back to  
6 December '19 and subtract two years, it  
7 would be like two and a half years.

8 Q. So approximately sometime in  
9 2017, you started driving for Uber, sir?

10 A. Yes, more or less.

11 Q. Now, sir, on December 5, 2019,  
12 while driving for Uber, were you following  
13 any instructions from anybody from Uber on  
14 how to operate with the tablet, the  
15 application?

16 THE INTERPRETER: Could you  
17 read that back to me, please? You  
18 meant, was he following somebody from  
19 Uber, right; is that what you meant,  
20 sir?

21 MR. MEIER: Yes.

22 THE INTERPRETER: Like somebody  
23 from Uber was giving him instructions  
24 over the phone or something like  
25 that?

Jose A. Alemar  
February 04, 2021

15

1 MR. MEIER: Yes.

2 THE INTERPRETER: Could you  
3 read that back to me, please?

4 (Whereupon, the referred-to  
5 question was read back by the  
6 Reporter.)

7 MR. OVERZAT: Objection to  
8 form.

9 A. Excuse me. I don't understand  
10 the question. Exactly on the 5th day?

11 Q. I'll rephrase it. We'll do a  
12 little bit of background; okay, sir?

13 A. Okay.

14 Q. Sir, when you signed up as an  
15 Uber driver in 2017, did anybody from Uber  
16 explain to you what the rules were with  
17 operating a car for Uber?

18 A. Yes. When I was going to sign  
19 up for them, I watched some videos, not  
20 specifically on how to use a tablet; not  
21 specifically for that.

22 Q. Were those videos, sir, videos  
23 that Uber required for you to watch before  
24 you could drive for Uber?

25 A. No.

Jose A. Alemar  
February 04, 2021

16

1           Q.     Sir, what were Uber's rules  
2 when driving a taxi or car with the Uber  
3 application on?

4           A.     I don't understand your  
5 question.

6           Q.     Sir, when you were driving for  
7 Uber back on December 5, 2019, did Uber  
8 require that its application stay on?

9           A.     But I consider that for one to  
10 begin working, the application has to be  
11 on.

12          Q.     And why is that, sir?

13          A.     How am I going to receive calls  
14 if the application is not turned on?

15          Q.     Sir, was the application being  
16 turned on, was that the only way that you  
17 received calls as an Uber driver, back on  
18 December 5, 2019?

19          A.     Of course. If not, in what  
20 manner am I going to receive calls if the  
21 application is not turned on?

22          Q.     So sir, I'm asking you  
23 questions. You're not asking me questions.

24                 I understand what you're  
25 saying. It's kind of rhetorical, but



Jose A. Alemar  
February 04, 2021

17

1 please just answer my question; okay, sir?

2 MR. OVERZAT: Well, if it's  
3 rhetorical, I'll object to the form  
4 of the question. How's that?

5 MR. MEIER: He's asking me --

6 MR. OVERZAT: Well, you give  
7 him the answer, and he'll say, okay,  
8 fine.

9 MR. MEIER: Raul, can you  
10 please translate that?

11 A. No problem.

12 Q. Thank you.

13 Sir, just so we're clear. For  
14 you to be working for Uber as a driver back  
15 on December 5, 2019, the Uber application  
16 had to be turned on either on your phone or  
17 on your tablet?

18 MR. OVERZAT: Objection to  
19 form. The problem with the question  
20 seems to me is that you're asking  
21 whether or not he can get an  
22 assignment without having the tablet  
23 on. I understand that, but that's  
24 not the way the question is coming  
25 out. He's trying to tell you that --

Jose A. Alemar  
February 04, 2021

18

1 I guess he's inferring that if the  
2 tablet is off, he's not going to get  
3 a call. Why don't you ask him if he  
4 can get calls by the telephone or  
5 some other means, if the tablet is  
6 off? I don't know.

7 MR. MEIER: Yes.

8 MR. OVERZAT: But right now  
9 it's a question like a beating your  
10 wife thing and we're going to go down  
11 here for -- your hour is going to get  
12 wasted before we get into any  
13 details.

14 MR. MEIER: Madam reporter, can  
15 you read my question back? And if he  
16 can answer it, answer it. And if  
17 not, I'll rephrase it.

18 (Whereupon, the referred-to  
19 question was read back by the  
20 Reporter.)

21 Q. Correct?

22 A. Correct.

23 Q. Okay. And sir, after you  
24 obtained a passenger through the Uber  
25 application, did Uber require that the Uber

Jose A. Alemar  
February 04, 2021

19

1 application remain on for the duration of  
2 the ride?

3 A. Of course.

4 Q. So sir, is it safe to say that  
5 when you were operating the vehicle back on  
6 December 5, 2019 as an Uber driver, there  
7 were certain rules that you had to follow  
8 from Uber?

9 A. Of course, all of the rules  
10 that they have.

11 Q. And sir, can you just tell me  
12 what rules Uber had that you had to follow  
13 the second you turned on the application on  
14 December 5, 2019 up until and including the  
15 moment of impact with that pedestrian?

16 A. Naturally, you cannot be on the  
17 phone, or touching the phone, or the  
18 tablet. The tablet has to be placed on a  
19 mount and the cell phone also, so one can  
20 concentrate well.

21 Q. Sir, were there any other rules  
22 that you had to follow back on December 5,  
23 2019 as an Uber driver that Uber told you  
24 you had to do?

25 A. I do not consider to naturally

Jose A. Alemar  
February 04, 2021

20

1 start working.

2 MR. MEIER: I'm going to move  
3 to strike the nonresponsive portion  
4 of that answer.

5 Q. Sir, I don't think you  
6 understood my question; okay? So please  
7 listen to my question. And if you don't  
8 understand, let me know; okay, sir?

9 A. Okay.

10 Q. Sir, just so -- for one of the  
11 rules that you had to follow from Uber, was  
12 that the tablet or cell phone that the  
13 application was on remained active for the  
14 duration of looking for potential customers  
15 and when a customer was in the car through  
16 the Uber application; is that correct?

17 A. Correct.

18 Q. Sir, are you aware of the  
19 vehicle and traffic laws prohibition on  
20 using tablets or cell phones while  
21 operating a vehicle?

22 MR. OVERZAT: Objection to the  
23 form of the question. And don't  
24 answer.

25 MR. MEIER: What's the basis

Jose A. Alemar  
February 04, 2021

21

1           for directing him not to answer,  
2           Counsel?

3           MR. OVERZAT: Because you can't  
4           ask him what he -- is he aware of a  
5           particular section of a law. Ask him  
6           in facts; he's a fact witness.

7           MR. MEIER: I'm asking him his  
8           understanding of the law.

9           MR. OVERZAT: Make a motion if  
10          you'd like. Let's not waste the rest  
11          --

12          MR. MEIER: All right.

13          MR. OVERZAT: Not that form.  
14          You can ask him -- I understand the  
15          content you want, but not in that  
16          form.

17          MR. MEIER: Mark that for a  
18          ruling, because that's improper for  
19          you to direct him not to answer that  
20          question.

21          Q.     Sir, you have a driver's  
22          license; correct?

23          A.     Correct.

24          Q.     And you had to take a written  
25          test to obtain that driver's license here

Jose A. Alemar  
February 04, 2021

22

1 in the state of New York; correct?

2 A. Correct.

3 Q. And as part of that test, was  
4 your understanding of the rules of the  
5 road; correct?

6 MR. OVERZAT: Objection to  
7 form. He can answer.

8 A. Repeat the question, please.

9 MR. MEIER: Can I have that  
10 question read back, please, madam  
11 reporter?

12 (Whereupon, the referred-to  
13 question was read back by the  
14 Reporter.)

15 A. Correct.

16 Q. And you are a professional  
17 driver for Uber for about four years now;  
18 correct?

19 A. No, not five years.

20 Q. I said four years, sir.

21 THE INTERPRETER: I said five.

22 (Whereupon, the referred-to  
23 question was interpreted again by the  
24 Interpreter.)

25 A. Approximately, yes.

Jose A. Alemar  
February 04, 2021

23

1 Q. And as a professional driver,  
2 who has taken a test on the rules of the  
3 road, can you please tell me what your  
4 understanding is with respect to operating  
5 a motor vehicle and using either a tablet  
6 or a cell phone while the vehicle is in  
7 motion?

8 MR. OVERZAT: Over my  
9 objection, he can answer.

10 A. Repeat it, please.

11 MR. MEIER: Sure. Madam  
12 reporter, can you please read that  
13 back?

14 (Whereupon, the referred-to  
15 question was read back by the  
16 Reporter.)

17 A. Naturally, if one receives a  
18 call and you do not have a passenger, you  
19 park the vehicle to receive the call,  
20 naturally.

21 MR. MEIER: If you don't mind,  
22 I have to take a two-minute break.

23 (Whereupon, a short recess was  
24 taken.)

25 Q. Now, sir, let's shift over to

Jose A. Alemar  
February 04, 2021

24

1 the morning of -- I'm sorry -- the  
2 afternoon of December 5, 2019; okay?

3 A. Okay.

4 Q. Now, you've already testified  
5 that your motor vehicle came in contact  
6 with a pedestrian on December 5, 2019; is  
7 that correct?

8 A. Correct.

9 Q. When you were operating the  
10 motor vehicle at the moment it came in  
11 contact with the pedestrian on December 5,  
12 2019, the Uber application was turned on in  
13 your car, that's the testimony you  
14 provided; is that correct, sir?

15 A. Correct.

16 Q. Okay. What was the location of  
17 the impact between your motor vehicle and  
18 the pedestrian?

19 A. It was exactly at building No.  
20 3681 Bruckner Boulevard.

21 Q. Sir, did you review anything in  
22 preparation for your testimony today?

23 A. Absolutely nothing.

24 Q. Did you ever look at the police  
25 report for this accident, sir?



Jose A. Alemar  
February 04, 2021

25

1           A.     I did not see it. Because, as  
2     a matter of fact, I do not even know where  
3     I have it, unfortunately.

4           Q.     That's fine that you don't know  
5     where it is, sir.

6                     Sir, what is located at 3681  
7     Bruckner Boulevard; what type of building  
8     is that?

9           A.     It's a commercial building.  
10    There are several businesses. Where it  
11    occurred was exactly in front of the CVS  
12    pharmacy.

13          Q.     And sir, did the impact between  
14    your vehicle and the pedestrian occur on  
15    Buhre Avenue or on Bruckner Avenue?

16          A.     Bruckner Boulevard.

17                   MR. OVERZAT: Andrew, it's  
18    Buhre. You're obviously not a Bronx  
19    person.

20                   MR. MEIER: I'm not.

21                   MR. OVERZAT: Buhre.

22                   MR. MEIER: I'm more of a  
23    Brooklyn guy.

24                   MR. OVERZAT: Lucky you.

25          Q.     Sir, let me ask you this

Jose A. Alemar  
February 04, 2021

26

1 question. In the three minutes before the  
2 accident happened, what street were you  
3 traveling on?

4 A. I really wasn't driving. I was  
5 on Westchester Avenue, right there at the  
6 corner where you turn to -- turn to  
7 Bruckner Boulevard to the right.

8 Q. What were the lighting  
9 conditions like at the time your motor  
10 vehicle came in contact with a pedestrian  
11 on December 5, 2019?

12 A. It was still light out; not  
13 sunny. It was cold for the season already.

14 Q. In the 24 hours prior to coming  
15 in contact with the pedestrian on December  
16 5, 2019, did you consume any alcoholic  
17 beverage?

18 A. No, sir.

19 Q. What about any illegal  
20 narcotics?

21 A. Never in my life.

22 Q. Any prescription medication  
23 that may have affected your ability to  
24 drive?

25 A. No, sir.

Jose A. Alemar  
February 04, 2021

27

1 Q. Did you fail to take any  
2 prescription medication that you should  
3 have taken, that the failure to do so would  
4 have affected your ability to drive?

5 A. No, sir.

6 Q. Sir, I see you are wearing  
7 glasses today; what do you need the glasses  
8 for?

9 A. To read.

10 Q. Are you required to wear the  
11 glasses to operate a motor vehicle?

12 A. No, sir. At the present time,  
13 it is 20/20. Thank the lord.

14 Q. Sir, has your driver's license  
15 ever been suspended at any point in time?

16 A. One time it was suspended for  
17 30 days.

18 Q. When was that?

19 A. Honestly, I do not recall the  
20 date, but it's been approximately some ten  
21 years, if I'm not mistaken.

22 Q. Why was your license suspended  
23 for 30 days approximately ten years ago?

24 A. I had an attorney. I had some  
25 tickets that had accumulated. He let the

Jose A. Alemar  
February 04, 2021

28

1 time go by. After, I was found guilty for  
2 those incidents; the points added.

3 Q. Sir, in the three minutes  
4 before your car came in contact with the  
5 pedestrian on December 5, 2019, what was  
6 your highest rate of speed?

7 A. Three minutes before I have  
8 said that I was not going at any speed. I  
9 was stopped.

10 MR. OVERZAT: Off the record.

11 (Whereupon, an off-the-record  
12 discussion was held.)

13 Q. Okay. And sir, was your  
14 vehicle moving at the moment that it came  
15 in contact with the pedestrian on December  
16 5, 2019?

17 A. Of course.

18 Q. And approximately how fast was  
19 your vehicle moving at the moment of impact  
20 with the pedestrian on December 5, 2019?

21 A. Not more than five.

22 Q. Now, your car was stopped at  
23 some point in time before the impact; is  
24 that correct, sir?

25 A. Yes, of course, before the

Jose A. Alemar  
February 04, 2021

29

1 light changed and I let pedestrians cross.

2 Q. And then once the light  
3 changed, you began to move the vehicle; is  
4 that correct?

5 A. Yes. I moved it a little bit.  
6 Further up is the crosswalk. I let the  
7 pedestrians cross, and then I moved the  
8 vehicle.

9 MR. MEIER: Move to strike the  
10 nonresponsive portion of the answer.

11 Q. Sir, did you move the vehicle  
12 to the right, straight, or left, when the  
13 light turned green or when the light  
14 changed?

15 A. Naturally, a bit forward,  
16 because I have to wait to turn.

17 Q. Sir, when the light changed,  
18 was it your intention to go straight, make  
19 a left, or make a right?

20 A. To the right. There, you can  
21 only turn to the right.

22 MR. MEIER: Madam reporter, can  
23 I mark those photographs, Plaintiff's  
24 1, 2, 3, 4, 5 and 6, please.

25 MR. OVERZAT: On the record,

Jose A. Alemar  
February 04, 2021

30

1 just so that counsel and I can  
2 understand and we can refer to this  
3 for the witness. The pictures will  
4 be identified by what Google Maps has  
5 indicated at the top left above the  
6 picture as being a geographical  
7 address. They misrepresent the word  
8 "Buhre" as being B-U-R-R. It's  
9 actually B-U-H-R-E. I concede that  
10 there are five for Buhre Avenue and  
11 one for Westchester.

12 MR. MEIER: And then, madam  
13 court reporter shall mark them  
14 accordingly following the deposition.

15 MR. OVERZAT: Off the record.

16 (Whereupon, an off-the-record  
17 discussion was held.)

18 MR. MEIER: We'll mark this  
19 one. This shall be Plaintiff's 1 and  
20 Plaintiff's 1 will have -- it says  
21 Google Maps, and then it's 3276 Buhre  
22 Avenue.

23 Q. Do you see this photo, sir?

24 A. The thing is that is not Buhre.

25 Isn't that Westchester?

Jose A. Alemar  
February 04, 2021

31

1 MR. MEIER: Can we go off the  
2 record for a second?

3 (Whereupon, an off-the-record  
4 discussion was held.)

5 MR. MEIER: Back on the record.

6 Q. Sir, do you see on the  
7 photograph where it says 3276 above the  
8 picture?

9 A. I do not see any number. I  
10 only see Buhre on the street -- on the  
11 pavement.

12 Q. Now, sir, do you see the word  
13 Google Maps on the photograph?

14 A. That, of course.

15 Q. And right to the right -- I'm  
16 not asking you about street names, sir. I  
17 want you to ignore street names; okay?

18 Do you see 3276? Do you see  
19 those four numbers where my mouse is?

20 A. Yes, of course. After Google  
21 Maps.

22 Q. Sir, now this photograph is  
23 going to be marked as Plaintiff's Exhibit  
24 1. Now, I've zoomed in a little bit, so  
25 you can see the photograph better.

Jose A. Alemar  
February 04, 2021

32

1 Do you see on the right-hand  
2 side a building with Dunkin Donuts on it?

3 (Whereupon, a photograph was  
4 marked as Plaintiff's Exhibit 1 for  
5 identification as of this date by the  
6 Reporter.)

7 A. Yes, of course. You can see  
8 the sign on the right side.

9 Q. And there is an elevated subway  
10 line above the road that's depicted in  
11 Plaintiff's Exhibit 1; is that correct, yes  
12 or no?

13 A. Yes.

14 Q. And do you see one of the  
15 pillars that has yellow paint on it in the  
16 middle -- in approximately the middle of  
17 the photograph?

18 A. Of course.

19 Q. And right to the right of that  
20 yellow pillar, do you see a car with its  
21 brake lights on?

22 A. Correct, of course.

23 Q. In the few moments before the  
24 impact occurred, were you facing this  
25 light, that the car with the brake lights



Jose A. Alemar  
February 04, 2021

33

1 on was facing?

2 A. I cannot tell you if I was  
3 looking at that vehicle.

4 MR. MEIER: Move to strike.

5 Q. Sir, I don't think you  
6 understood my question.

7 You were stopped at a light  
8 right before the accident happened;  
9 correct?

10 A. Yes, before turning.

11 Q. And you were intending on  
12 turning to the right, making a right-hand  
13 turn; is that correct?

14 A. Yes. There, you can only turn  
15 to the right.

16 MR. MEIER: Can we go off the  
17 record for a second?

18 MR. OVERZAT: Sure.

19 (Whereupon, an off-the-record  
20 discussion was held.)

21 MR. MEIER: Back on the record,  
22 please?

23 Q. Sir, were you intending on  
24 making a right onto Bruckner Avenue as  
25 depicted in Plaintiff's Exhibit 1?

Jose A. Alemar  
February 04, 2021

34

1           A.     Yes.

2           Q.     So when you were stopped at the  
3     light, were you stopped on the right side,  
4     or the left side of the pillar with the  
5     yellow paint?

6           A.     On the right side.

7           Q.     Approximately where the car  
8     that we see in Plaintiff's Exhibit 1 with  
9     the brake lights is located, in that  
10    general area?

11          A.     Of course, exactly before the  
12    line.

13          Q.     How many cars were stopped in  
14    front of you at the light?

15          A.     There weren't any. I was the  
16    first.

17          Q.     And when the light turned  
18    green, what, if anything, did you do with  
19    your vehicle?

20          A.     I moved it forward a little,  
21    and stopped, and waited for the pedestrians  
22    to cross, who were going up to the train  
23    station.

24          Q.     Now, when the pedestrians that  
25    you stopped to allow to cross the street,

Jose A. Alemar  
February 04, 2021

35

1 were they crossing over Bruckner Boulevard,  
2 or some other street?

3 A. Bruckner Boulevard.

4 Q. And did you stop to allow those  
5 pedestrians to cross because it is your  
6 understanding that when turning right in  
7 that situation, the pedestrians have the  
8 right-of-way over Bruckner Boulevard?

9 A. Of course. Correct.

10 Q. In addition to the traffic  
11 light that turned green, was there a light  
12 directing traffic over Bruckner Boulevard  
13 at the time of the accident?

14 A. The only light there is for the  
15 pedestrians to cross when one turns there.

16 Q. Sir, my question was, was there  
17 a walk and do not walk sign located on the  
18 other side of Bruckner Boulevard?

19 A. Of course, to cross on the  
20 street.

21 Q. Sir, when you were attempting  
22 to make the right-hand turn, and you  
23 stopped to let those pedestrians cross, did  
24 you observe the light controlling  
25 pedestrian traffic?

Jose A. Alemar  
February 04, 2021

36

1                   THE INTERPRETER: I'm sorry.  
2                   Could you read that back? I lost it  
3                   there.

4                   (Whereupon, the referred-to  
5                   question was read back by the  
6                   Reporter.)

7                   A.     Of course.

8                   Q.     And when you observed the light  
9                   controlling pedestrian traffic over  
10                  Bruckner Boulevard, before making that  
11                  right-hand turn, what color was it?

12                  A.     Sorry about that (in English.)  
13                  Turned the volume down, but  
14                  wasn't able. Could you repeat the  
15                  question, please?

16                  MR. MEIER: Madam court  
17                  reporter, can you please read the  
18                  question back, so the translator can  
19                  translate it, please?

20                  (Whereupon, the referred-to  
21                  question was read back by the  
22                  Reporter.)

23                  A.     When you turn there, it's  
24                  always white.

25                  Q.     Is that what color you saw

Jose A. Alemar  
February 04, 2021

37

1 while you were waiting, attempting to make  
2 that right-hand turn?

3 A. Yes, of course. The thing is,  
4 it is always white when they are crossing.

5 Q. Sir, at any point in time, from  
6 when you started moving your vehicle when  
7 your light turned green, up until coming in  
8 contact with the pedestrian, did you see  
9 the pedestrian light of any color, other  
10 than white?

11 A. I want to clear something up.  
12 When I had the impact with the pedestrian,  
13 I did not see the light; I was already  
14 halfway on the other side.

15 Q. Sir, my question is very clear,  
16 and it's a yes-or-no question.

17 From the time you started  
18 moving your vehicle up until the moment you  
19 -- the second you came in contact with the  
20 pedestrian, did you see the pedestrian  
21 light turn from any color, other than  
22 white, or was it white the whole time once  
23 your light turned green?

24 A. No.

25 Q. Please let him finish the

Jose A. Alemar  
February 04, 2021

38

1 question, sir.

2 THE INTERPRETER: I'm sorry.

3 You're going to have to read that  
4 back to me.

5 (Whereupon, the referred-to  
6 question was read back by the  
7 Reporter.)

8 A. When I crossed -- I'll repeat  
9 it to you -- I did not see any light,  
10 because when I had the impact with her, I  
11 had already turned.

12 Q. Sir, did the impact -- what  
13 portion of your vehicle came in contact  
14 with the pedestrian?

15 A. Exactly it was in the middle of  
16 the hood and she was the one that hit it.

17 MR. MEIER: I'm going to move  
18 to strike the nonresponsive portion  
19 of the witness's answer.

20 Q. Sir, my question is a very  
21 simple question. Please just listen to my  
22 questions; okay?

23 In the three seconds before the  
24 impact happened, where were you looking?

25 A. To the -- straight ahead.

Jose A. Alemar  
February 04, 2021

39

1 Q. And in the two seconds before  
2 the impact occurred, where were you  
3 looking?

4 A. Two seconds before when I saw  
5 something moving quickly, because it was  
6 something that came out running.

7 MR. MEIER: I'm going to move  
8 to strike the nonresponsive portion  
9 of the witness's answer.

10 Q. Sir, please listen to my  
11 question and answer my question.

12 In the two seconds before the  
13 impact, where were you looking?

14 A. Forward. Forward.

15 Q. Sir, in the one second before  
16 the impact occurred, where were you  
17 looking?

18 A. Forward.

19 Q. Sir, at the moment of impact,  
20 where were you looking?

21 A. Exactly forward; the person was  
22 on top of the car and fell.

23 MR. MEIER: Again, I'm going to  
24 move to strike the nonresponsive  
25 portion of the witness's answer.

Jose A. Alemar  
February 04, 2021

40

1           Q.     Sir, did you see the pedestrian  
2           that your vehicle came in contact with at  
3           any point in time prior to the impact?

4           A.     No.

5           Q.     Sir, where on Bruckner  
6           Boulevard did you come in contact with that  
7           pedestrian?

8                   MR. MEIER: I'm sorry. Mr.  
9           Interpreter, I kind of --

10                  MR. OVERZAT: There's a  
11           question pending. Please let him  
12           answer.

13                  MR. MEIER: I just said that,  
14           Counsel.

15           A.     Exactly in the middle of the  
16           block almost between the two busses.

17           Q.     How many busses were present at  
18           the time of the impact?

19           A.     On the right side there were  
20           two.

21           Q.     Did the impact between your  
22           vehicle and the pedestrian, that you didn't  
23           see before the impact, occur in the  
24           crosswalk?

25           A.     Not possible.



Jose A. Alemar  
February 04, 2021

41

1 Q. Did you observe passengers  
2 exiting one of the two busses at any point  
3 in time prior to the impact on December 5,  
4 2019?

5 A. No.

6 Q. Sir, prior to the impact, did  
7 you sound your horn?

8 A. No. I did not have time; it  
9 was a surprise when she fell on the car.

10 Q. Did you slam on your brakes,  
11 sir?

12 A. Of course.

13 Q. When did you -- did you slam on  
14 your brakes prior to impact or at the  
15 moment of impact?

16 A. At the time of the impact.

17 Q. Sir, what do you mean when you  
18 said the impact was a surprise?

19 A. Of course, because I wasn't  
20 waiting for a person to run and fall on the  
21 vehicle; that is how I saw it.

22 Q. Sir, were you paying attention  
23 to pedestrians and vehicles and the general  
24 traffic conditions at the moment of impact?

25 A. Of course. You have to be very

Jose A. Alemar  
February 04, 2021

42

1 cautious there, that is why I was going at  
2 less than five.

3 MR. MEIER: I'm going to move  
4 to strike the nonresponsive portion  
5 of the witness's answer. Madam court  
6 reporter, can --

7 MR. OVERZAT: I oppose that  
8 motion. That was a clear answer.

9 MR. MEIER: You can make that  
10 motion at the time of trial, and you  
11 can --

12 MR. OVERZAT: No. You make the  
13 motion.

14 MR. MEIER: You can object to  
15 that motion at the time of trial. I  
16 don't know what it means when you put  
17 your hand underneath your chin and  
18 wave your fingers at me.

19 MR. OVERZAT: Because you're  
20 making an issue about whether I can  
21 make a motion later on when you're  
22 making a motion now. I'm recording  
23 the fact that I have an answer on  
24 your other motions, but I am opposing  
25 your motion now. Thank you.

Jose A. Alemar  
February 04, 2021

43

1 MR. MEIER: I just didn't  
2 understand as professional adults,  
3 are we acting as little rascals or  
4 are we going to proceed as grown-ups.

5 MR. OVERZAT: As you wish.

6 MR. MEIER: You're the one that  
7 made an insane hand gesture.

8 Madam court reporter, can you  
9 please read back my last question to  
10 the witness?

11 (Whereupon, the referred-to  
12 question was read back by the  
13 Reporter.)

14 Q. And that's a yes or a no  
15 question, sir.

16 A. Of course, yes.

17 Q. So sir, let me just make sure I  
18 understand it, and if this is correct, tell  
19 me it's correct. If it's not, tell me it's  
20 not.

21 Is it your position that the  
22 person that you came in contact with on  
23 December 5, 2019, just ran out into the  
24 middle of the street and you hit them?

25 A. Of course.

Jose A. Alemar  
February 04, 2021

44

1           Q.     So sir, then is it your  
2 position that you are not responsible for  
3 the happening of this accident?

4           MR. OVERZAT: Objection. Don't  
5 answer the question. It's  
6 argumentative and it's the issue to  
7 this case. Don't answer. His  
8 opinion is --

9           Q.     Sir, who do you feel is at  
10 fault for the happening of this accident?

11          MR. OVERZAT: Objection. Don't  
12 answer the question.

13          Q.     Sir, do you feel there was  
14 anything that you could have done to avoid  
15 coming in contact with the pedestrian?

16          MR. OVERZAT: You're asking him  
17 for a hindsight opinion now. I'm not  
18 going to let him answer that either.

19          Q.     Sir, did you engage in any  
20 evasive maneuvers to avoid coming in  
21 contact with the pedestrian?

22          MR. OVERZAT: Over my  
23 objection, you can answer.

24          A.     There was no time, no.

25          Q.     Sir, did you observe the person

Jose A. Alemar  
February 04, 2021

45

1       that you hit after the accident?

2           A.     Of course, as a matter of fact,  
3       I got out of the car.

4           Q.     Did you have a conversation  
5       with her?

6           A.     Yes.

7           Q.     What did you say to her?

8           A.     I asked her what happened,  
9       where did she come from.

10          Q.     And what did she say to you?

11          A.     She clearly told me that she  
12       was sorry and that she was running to go  
13       and get on a bus on the other side.

14          Q.     Did you say anything else to  
15       her?

16          A.     Yes, of course. I asked her  
17       how she was. I was going to call 911. She  
18       was trying to get up and I told her not to  
19       get up until I called 911.

20          Q.     Did she say anything else to  
21       you?

22          A.     She repeated several times that  
23       she was in a hurry, that she was sorry  
24       because of what had happened.

25          Q.     Was there any other

Jose A. Alemar  
February 04, 2021

46

1 conversation between you and the person  
2 that you came in contact with on December  
3 5, 2019?

4 A. Yes, of course.

5 Q. What else -- tell me the rest  
6 of the conversation between you and the  
7 person that you hit on December 5, 2019.

8 A. Yes. Naturally, I asked her if  
9 she wanted to use something to get warm. I  
10 was going to give her my jacket because the  
11 ground was cold. The temperature was cold.

12 Q. And did she say anything else  
13 to you?

14 A. She told me that, no, that she  
15 was okay, that she appreciated it, that  
16 thank you.

17 Q. Sir, have you now told me all  
18 of the conversations between you and the  
19 person that you hit on December 5, 2019?

20 A. Yes, of course.

21 Q. Were your headlights on at the  
22 time of the impact?

23 A. Yes, of course, and then I  
24 turned on the hazard lights.

25 Q. Did the ambulance come?

Jose A. Alemar  
February 04, 2021

47

1 A. Yes, sir.

2 Q. Who called the ambulance?

3 A. I didn't call the ambulance. I  
4 called 911, explained to them that there  
5 was a person that had been hit on the  
6 ground.

7 Q. Did the woman appear to be in  
8 pain when she was on the ground, after you  
9 struck her with your vehicle?

10 A. I really cannot say. I would  
11 say not. I cannot decide for her, but she  
12 was on the ground, stayed on the ground.

13 Q. Did you see her face grimace,  
14 at all, at any point in time after the  
15 impact up until the time she left in an  
16 ambulance?

17 A. She was complaining naturally  
18 because of the impact. I don't know about  
19 grimace, but she was crying and all of  
20 that.

21 Q. So then is it safe -- you  
22 observed her crying; is that correct, sir,  
23 is that what you are saying?

24 A. No. She made a gesture with  
25 her face. I did not see any tears on her

Jose A. Alemar  
February 04, 2021

48

1 face.

2 Q. Can you describe the gesture  
3 that she made with her face?

4 A. Something like pain, but she  
5 felt uncomfortable that she was in pain.  
6 Naturally, it was an impact.

7 Q. What do you mean by "naturally,  
8 it was an impact," sir; what do you mean by  
9 that?

10 A. I don't understand. Excuse me.

11 Q. Sir, you just said "naturally,  
12 it was an impact." I am asking you what  
13 did you mean when you said "naturally, it  
14 was an impact"?

15 A. So that you can understand.  
16 The impact with my car, she fell to the  
17 ground; that, naturally, can cause pain.

18 Q. Sir, would you describe the  
19 impact between your vehicle and the  
20 pedestrian on December 5, 2019, as hard,  
21 medium, or light?

22 A. Light.

23 Q. Did the pedestrian that you  
24 struck on December 5, 2019, remain on the  
25 ground until the ambulance arrived on the



Jose A. Alemar  
February 04, 2021

49

1 scene?

2 A. Yes. Correct.

3 Q. Did you observe her get into  
4 the ambulance?

5 A. Yes. I waited until she was in  
6 the ambulance.

7 Q. How did she get into the  
8 ambulance?

9 A. The paramedics placed a bed on  
10 the ground, and then they took her inside.  
11 If I'm not mistaken, that's how it was.

12 Q. Did you observe them put any  
13 braces on any portion of her body before  
14 placing her on the stretcher?

15 A. I cannot tell you, because at  
16 that time, the officers had already arrived  
17 and had asked me for the papers for my  
18 vehicle and my license.

19 Q. At any point in time, did you  
20 observe the woman that you struck with the  
21 vehicle have a conversation with the police  
22 on December 5, 2019?

23 A. Yes, of course. One of the  
24 officers approached her; she spoke with one  
25 of them, with the other one. I don't know.

Jose A. Alemar  
February 04, 2021

50

1           Q.     When you observed that  
2           conversation, was she on the ground, on the  
3           stretcher, or in the ambulance, or  
4           something else?

5           A.     I don't remember exactly, but  
6           she was not in the ambulance yet. She was  
7           either on the ground or already on the  
8           stretcher.

9           Q.     Sir, when you had conversations  
10          with her following the impact, did she  
11          appear to be lucid?

12                 MR. OVERZAT: Over my  
13          objection, you can answer.

14          A.     Totally.

15          Q.     Sir, after the impact between  
16          your vehicle and the pedestrian on December  
17          5, 2019, did she remain on your hood, or  
18          did she fly off to the ground, or something  
19          else?

20          A.     Fell on the hood.

21          Q.     And at some point in time, did  
22          she go off to the ground, or did she remain  
23          on your hood, sir?

24          A.     Fell to the ground, but it  
25          wasn't a fall like that she flew to the

Jose A. Alemar  
February 04, 2021

51

1 ground. She rolled to the ground; that is  
2 what it was.

3 Q. How far away from the front of  
4 your vehicle did she come to a rest on the  
5 ground?

6 A. Exactly in front.

7 Q. How many feet would you say,  
8 sir?

9 A. One foot, at the most. One; I  
10 don't think it was two feet.

11 Q. All right. Can you see my  
12 screen again, sir?

13 A. I see the screen, the  
14 photograph.

15 Q. And do you see the number  
16 2,000, right to the right of Google Maps?

17 A. Yes. It says, "2000 Buhre  
18 Avenue."

19 MR. MEIER: Madam reporter,  
20 this shall be marked as Plaintiff's  
21 Exhibit 2. The photograph that has  
22 2000 Buhre Avenue right next to the  
23 Google Maps outside of the photo.

24 (Whereupon, a photograph was  
25 marked as Plaintiff's Exhibit 2 for

Jose A. Alemar  
February 04, 2021

52

1           identification as of this date by the  
2           Reporter.)

3           Q.     Sir, do you see the bus that's  
4           in this photograph?

5           A.     Yes, of course.

6           Q.     Do you see the back of the bus?

7           A.     Correct, of course.

8           Q.     Where the back of the bus is in  
9           Plaintiff's Exhibit 2, is that  
10          approximately where the impact occurred on  
11          the street?

12          A.     A lot more further up.

13          Q.     Approximately, how much further  
14          up the block?

15          A.     In feet, I cannot tell you.  
16          But where my car ended up was right in  
17          front of where it says, "CVS."

18          Q.     Was the CVS on your right or on  
19          your left?

20          A.     The right side, of course.

21          Q.     How long after you had  
22          completed the right-hand turn and your car  
23          was fully on Bruckner Boulevard was it  
24          before the impact occurred, how many  
25          seconds?

Jose A. Alemar  
February 04, 2021

53

1           A.     I would say five or seven  
2 seconds. I cannot tell you the exact time,  
3 but more or less.

4           Q.     Sir, approximately ten or 15  
5 minutes prior to coming in contact with the  
6 pedestrian, you had turned on the Uber app,  
7 and it was turned on for that ten to 15  
8 minutes prior to and including the moment  
9 of impact; that's been your testimony.

10                   So with that in mind, sir, at  
11 any point in time during the ten to 15  
12 minutes that the Uber app was on up until  
13 and including the impact, did anybody hail  
14 a ride from you?

15                   THE INTERPRETER: Do you mind  
16 reading that back to me in complete  
17 sentences?

18                   (Whereupon, the referred-to  
19 question was read back by the  
20 Reporter.)

21           A.     No, sir.

22           Q.     It was a yes or a no question.

23           A.     No, sir. And I'll repeat it to  
24 you, that I had not started working yet.  
25 And I need to explain to you, so that I can

Jose A. Alemar  
February 04, 2021

54

1 clear up your question.

2 MR. MEIER: So I'm going to  
3 move to strike the nonresponsive  
4 portion of the answer.

5 Q. Sir, yes or no. Please just  
6 answer yes or no, sir.

7 Had anybody actually hailed you  
8 through the Uber app for a ride, yes or no?

9 A. No.

10 MR. MEIER: Thank you. I have  
11 no further questions, sir.

12 (Whereupon, at 12:20 P.M., the  
13 Examination of this witness was  
14 concluded.)

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16 ° ° ° °

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Jose A. Alemar  
February 04, 2021

55

1                   D E C L A R A T I O N

2  
3           I hereby certify that having been  
4 first duly sworn to testify to the truth, I  
5 gave the above testimony.  
6

7           I FURTHER CERTIFY that the foregoing  
8 transcript is a true and correct transcript  
9 of the testimony given by me at the time  
10 and place specified hereinbefore.  
11

12  
13  
14                   \_\_\_\_\_  
JOSE ALEMAR

15  
16  
17 Subscribed and sworn to before me  
18 this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

19  
20  
21                   \_\_\_\_\_  
NOTARY PUBLIC  
22  
23  
24  
25

Jose A. Alemar  
February 04, 2021

56

## E X H I B I T S

## PLAINTIFF EXHIBITS

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	PAGE
1	Photograph	32
2	Photograph	52

(Original Exhibits retained by Counsel.)

## I N D E X

EXAMINATION BY	PAGE
Mr. Meier	5

INFORMATION AND/OR DOCUMENTS REQUESTED

INFORMATION AND/OR DOCUMENTS	PAGE
(None)	

## QUESTIONS MARKED FOR RULINGS

## PAGE LINE QUESTION

20	18	are you aware of the vehicle and
		traffic laws prohibition on
		using tablets or cell phones
		while operating a vehicle



Jose A. Alemar  
February 04, 2021

57

## C E R T I F I C A T E

STATE OF NEW YORK            )  
  : SS.:  
COUNTY OF QUEENS            )

I, SANITE CONSERVE, a Notary Public  
for and within the State of New York, do  
hereby certify:

That the witness whose examination is  
hereinbefore set forth was duly sworn and  
that such examination is a true record of  
the testimony given by that witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or by marriage and that I  
am in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 4th day of February 2021.

  
\_\_\_\_\_  
SANITE CONSERVE

Jose A. Alemar  
February 04, 2021

1

<b>Exhibits</b>	<b>2019</b>	20 12:2,23	10 45:1
	5:25 6:5	13:5,12,20	<b>accommodate</b>
	9:10,13,16,	14:3,11	8:1
<b>EX 0001 Jose</b>	20 10:6,13,	16:7,18	<b>accommodating</b>
<b>A. Alemar 02-</b>	18,21 11:9,	17:15 19:6,	8:9
<b>04-21</b>	16,21 12:2,	14,22 24:2,	<b>accumulated</b>
31:23,24	23 13:5,12,	6,11 26:11,	27:25
32:4,11	20 14:3,11	16 28:5,16,	<b>acting</b>
33:25 34:8	16:7,18	20 29:24	43:3
56:6	17:15 19:6,	41:3 43:23	<b>action</b>
<b>EX 0002 Jose</b>	14,23 24:2,	46:3,7,19	5:23
<b>A. Alemar 02-</b>	6,12 26:11,	48:20,24	<b>active</b>
<b>04-21</b>	16 28:5,16,	49:22 50:17	10:10 20:13
51:21,25	20 41:4	<b>5th</b>	<b>added</b>
52:9 56:7	43:23 46:3,	15:10	28:2
	7,19 48:20,		<b>addition</b>
<b>1</b>	24 49:22	<b>6</b>	35:10
	50:17		<b>address</b>
<b>1</b>	<b>24</b>	<b>6</b>	5:16 9:1,2,6
29:24 30:19,	26:14	29:24	30:7
20 31:24	<b>2nd</b>		<b>adults</b>
32:4,11	5:17	<b>8</b>	43:2
33:25 34:8			<b>affected</b>
<b>10461</b>	<b>3</b>	<b>8</b>	26:23 27:4
5:18		13:9,11	<b>affiliated</b>
<b>1329</b>	<b>3</b>	<b>9</b>	10:1,6,9,12,
5:17	29:24		16
<b>15</b>	<b>30</b>		<b>afternoon</b>
11:22,25	27:17,23	<b>911</b>	24:2
12:16 13:13	<b>3276</b>	45:17,19	<b>ago</b>
<b>19</b>	30:21 31:7,	47:4	27:23
14:6	18		<b>ahead</b>
	<b>3681</b>	<b>A</b>	38:25
<b>2</b>	24:20 25:6		<b>alcoholic</b>
		<b>ability</b>	26:16
<b>2</b>	<b>4</b>	26:23 27:4	<b>Alemar</b>
29:24 51:21,		<b>able</b>	5:15
25	<b>4</b>	36:14	<b>allow</b>
<b>2,000</b>	29:24	<b>above</b>	6:11,12
51:16		30:5 31:7	34:25 35:4
<b>20/20</b>	<b>5</b>	32:10	<b>ambulance</b>
27:13		<b>absolutely</b>	46:25 47:2,
<b>2000</b>	<b>5</b>	8:8 24:23	3,16 48:25
51:17,22	5:25 6:5	<b>accident</b>	49:4,6,8
<b>2017</b>	9:16,20	5:24 24:25	50:3,6
14:9 15:15	10:6,13,18,	26:2 33:8	<b>and/or</b>
	21 11:9,16,	35:13 44:3,	10:23

Jose A. Alemar  
February 04, 2021

2

<b>Andrew</b> 5:20 25:17	<b>arising</b> 5:24	13:12 14:5, 17 15:3,5	<b>brake</b> 32:21,25
<b>answer</b> 6:14,15,16, 22 8:6,12,21 17:1,7 18:16 20:4,24 21:1,19 22:7 23:9 29:10 38:19 39:9, 11,25 40:12 42:5,8,23 44:5,7,12, 18,23 50:13	<b>around</b> 12:7	16:7,17 17:14 18:15, 19 19:5,22 22:10,13 23:13,15 31:5 33:21 36:2,5,18,21 38:4,6 43:9, 12	34:9 <b>brakes</b> 41:10,14 <b>break</b> 8:11,12,13 23:22
<b>answers</b> 5:4	<b>arrived</b> 48:25 49:16	<b>asked</b> 45:8,16 46:8 49:17	<b>Bronx</b> 5:18 25:18
<b>Antonio</b> 5:15	<b>asking</b> 16:22,23 17:5,20 21:7 31:16 44:16 48:12	<b>background</b> 15:12	<b>Brooklyn</b> 25:23
<b>anybody</b> 14:13 15:15	<b>assignment</b> 17:22	<b>Balcom</b> 5:17	<b>Bruckner</b> 24:20 25:7, 15,16 26:7 33:24 35:1, 3,8,12,18 36:10 40:5
<b>app</b> 10:17 12:20	<b>association</b> 5:23	<b>basis</b> 20:25	<b>Buhre</b> 25:15,18,21 30:8,10,21, 24 31:10 51:17,22
<b>application</b> 11:6,15,19, 25 12:5,8, 15,24 13:7, 16,21 14:15 16:3,8,10, 14,15,21 17:15 18:25 19:1,13 20:13,16 24:12	<b>assume</b> 8:20	<b>beating</b> 18:9	<b>building</b> 24:19 25:7,9 32:2
<b>appreciated</b> 46:15	<b>attempting</b> 35:21 37:1	<b>begin</b> 8:24 16:10	<b>bus</b> 12:11 45:13
<b>approached</b> 49:24	<b>attention</b> 41:22	<b>best</b> 7:12	<b>businesses</b> 25:10
<b>approximately</b> 9:3 11:21 14:8 22:25 27:20,23 28:18 32:16 34:7	<b>attorney</b> 5:20 6:20 8:8 27:24	<b>better</b> 31:25	<b>busses</b> 40:16,17 41:2
<b>area</b> 34:10	<b>Avenue</b> 5:17 25:15 26:5 30:10, 22 33:24 51:18,22	<b>beverage</b> 26:17	
<b>argumentative</b> 44:6	<b>avoid</b> 44:14,20	<b>bit</b> 15:12 29:5, 15 31:24	
	<b>aware</b> 20:18 21:4	<b>block</b> 40:16	<b>C</b>
	<b>B</b>	<b>body</b> 49:13	<b>call</b> 8:6 12:12 18:3 23:18, 19 45:17 47:3
	<b>B-U-H-R-E</b> 30:9	<b>Boulevard</b> 24:20 25:7, 16 26:7 35:1,3,8,12, 18 36:10 40:6	<b>called</b> 5:6 45:19 47:2,4
	<b>B-U-R-R</b> 30:8	<b>braces</b> 49:13	<b>calls</b> 16:13,17,20 18:4
	<b>back</b> 6:17 9:9		

Jose A. Alemar  
February 04, 2021

3

<b>car</b>	<b>complaining</b>	35:9 43:18, 19 47:22	<b>D</b>
13:15 14:1	47:17	49:2	
15:17 16:2	<b>complete</b>		<b>dashboard</b>
20:15 24:13	9:23 10:2,3	<b>counsel</b>	13:23 14:1
28:4,22	<b>concede</b>	21:2 30:1	<b>date</b>
32:20,25	30:9	40:14	27:20 32:5
34:7 39:22	<b>concentrate</b>	<b>course</b>	<b>day</b>
41:9 45:3	19:20	16:19 19:3,9	10:3 15:10
48:16	<b>conditions</b>	28:17,25	<b>days</b>
<b>cars</b>	26:9 41:24	31:14,20	27:17,23
34:13	<b>consider</b>	32:7,18,22	<b>December</b>
<b>case</b>	16:9 19:25	34:11 35:9,	5:25 6:5
12:24 44:7	<b>consume</b>	19 36:7 37:3	9:3,10,13,
<b>cautious</b>	26:16	41:12,19,25	16,20 10:6,
42:1	<b>contact</b>	43:16,25	13,17,21
<b>cell</b>	11:15,20	45:2,16	11:9,16,20
12:21 19:19	12:1,18	46:4,20,23	12:1,23
20:12,20	13:14,22	49:23	13:5,12,20
23:6	24:5,11	<b>court</b>	14:3,6,11
<b>certain</b>	26:10,15	6:3 7:1 9:7	16:7,18
19:7	28:4,15	30:13 36:16	17:15 19:6,
<b>changed</b>	37:8,19	42:5 43:8	14,22 24:2,
29:1,3,14,17	38:13 40:2,6	<b>create</b>	6,11 26:11,
<b>chin</b>	43:22 44:15,	7:3	15 28:5,15,
42:17	21 46:2	<b>cross</b>	20 41:3
<b>clear</b>	<b>content</b>	29:1,7	43:23 46:2,
10:5,11	21:15	34:22,25	7,19 48:20,
11:1,12	<b>controlling</b>	35:5,15,19,	24 49:22
12:14 17:13	35:24 36:9	23	50:16
37:11,15	<b>conversation</b>	<b>crossed</b>	<b>decide</b>
42:8	45:4 46:1,6	38:8	47:11
<b>clearly</b>	49:21 50:2	<b>crossing</b>	<b>depicted</b>
45:11	<b>conversations</b>	35:1 37:4	32:10 33:25
<b>cold</b>	46:18 50:9	<b>crosswalk</b>	<b>deposition</b>
26:13 46:11	<b>corner</b>	29:6 40:24	6:8 30:14
<b>color</b>	26:6	<b>crying</b>	<b>describe</b>
36:11,25	<b>correct</b>	47:19,22	12:2 48:2,18
37:9,21	9:19 10:13,	<b>customer</b>	<b>details</b>
<b>come</b>	14 11:11,17	12:7 20:15	18:13
11:15 12:12	18:21,22	<b>customers</b>	<b>direct</b>
40:6 45:9	20:16,17	20:14	21:19
46:25 51:4	21:22,23	<b>CVS</b>	<b>directing</b>
<b>commercial</b>	22:1,2,5,15,	25:11	21:1 35:12
25:9	18 24:7,8,		<b>discussion</b>
<b>company</b>	14,15 28:24		28:12 30:17
10:2,4,20	29:4 32:11,		31:4 33:20
	22 33:9,13		

Jose A. Alemar  
February 04, 2021

4

<b>doing</b> 12:3	<b>evasive</b> 44:20	<b>fair</b> 8:22	<b>following</b> 5:3 14:12,18 30:14 50:10
<b>Donuts</b> 32:2	<b>exactly</b> 10:24 12:2	<b>fall</b> 41:20 50:25	<b>follows</b> 5:10
<b>drive</b> 14:2 15:24 26:24 27:4	13:24,25 15:10 24:19 25:11 34:11 38:15 39:21 40:15 50:5 51:6	<b>familiarized</b> 13:9	<b>foot</b> 51:9
<b>driver</b> 9:15,18 10:22 15:15 16:17 17:14 19:6,23 22:17 23:1	<b>EXAMINATION</b> 5:11	<b>far</b> 51:3	<b>form</b> 15:8 17:3,19 20:23 21:13, 16 22:7
<b>driver's</b> 21:21,25 27:14	<b>examined</b> 5:9	<b>fast</b> 28:18	<b>forward</b> 29:15 34:20 39:14,18,21
<b>driving</b> 12:7 14:9,12 16:2,6 26:4	<b>Excuse</b> 15:9 48:10	<b>fault</b> 44:10	<b>found</b> 28:1
<b>dropped</b> 12:9	<b>Exhibit</b> 31:23 32:4, 11 33:25 34:8 51:21, 25	<b>feel</b> 44:9,13	<b>four</b> 22:17,20 31:19
<b>duly</b> 5:7	<b>exiting</b> 41:2	<b>feet</b> 51:7,10	<b>friend</b> 12:10
<b>Dunkin</b> 32:2	<b>explain</b> 9:24 15:16	<b>fell</b> 39:22 41:9 48:16 50:20, 24	<b>front</b> 25:11 34:14 51:3,6
<b>duration</b> 19:1 20:14	<b>explained</b> 47:4	<b>felt</b> 48:5	
<b>E</b>	<b>explaining</b> 11:4	<b>finally</b> 8:16	<b>G</b>
<b>easy</b> 7:9	<b>F</b>	<b>fine</b> 17:8 25:4	<b>gave</b> 6:21 9:1
<b>either</b> 17:16 23:5 44:18 50:7	<b>face</b> 47:13,25 48:1,3	<b>fingers</b> 42:18	<b>general</b> 34:10 41:23
<b>elevated</b> 32:9	<b>facing</b> 32:24 33:1	<b>finish</b> 37:25	<b>geographical</b> 30:6
<b>employed</b> 9:9,11,12	<b>fact</b> 21:6 25:2 42:23 45:2	<b>first</b> 5:7 7:10 34:16	<b>gesture</b> 43:7 47:24 48:2
<b>employer</b> 10:17	<b>facts</b> 21:6	<b>five</b> 22:19,21 28:21 30:10 42:2	<b>give</b> 6:23 17:6 46:10
<b>engage</b> 44:19	<b>fail</b> 27:1	<b>flew</b> 50:25	<b>giving</b> 14:23
<b>English</b> 5:3,5 6:6,9, 12,13,16,18 36:12	<b>failure</b> 27:3	<b>Floor</b> 5:17	<b>glasses</b> 27:7,11
		<b>fly</b> 50:18	<b>goes</b> 7:25
		<b>follow</b> 7:8 19:7,12, 22 20:11	<b>going</b> 7:4,22 10:25

Jose A. Alemar  
February 04, 2021

5

15:18 16:13,	<b>happened</b>		<b>instructions</b>
20 18:2,10,	10:24 11:2	<b>I</b>	6:21 14:13,
11 20:2 28:8	26:2 33:8		23
31:23 34:22	38:24 45:8,	<b>identificatio</b>	<b>intending</b>
38:3,17	24	<b>n</b>	33:11,23
39:7,23	<b>happening</b>	32:5	<b>intention</b>
42:1,3 43:4	44:3,10	<b>identified</b>	29:18
44:18 45:17	<b>happy</b>	30:4	<b>interpreted</b>
46:10	8:18	<b>ignore</b>	22:23
<b>Good</b>	<b>hard</b>	31:17	<b>interpreter</b>
5:19	48:20	<b>illegal</b>	5:2,8 6:7
<b>Google</b>	<b>hazard</b>	26:19	14:16,22
30:4,21	46:24	<b>impact</b>	15:2 22:21,
31:13,20	<b>he'll</b>	19:15 24:17	24 36:1 38:2
51:16,23	17:7	25:13 28:19,	40:9
<b>green</b>	<b>head</b>	23 32:24	<b>involvement</b>
29:13 34:18	7:17	37:12 38:10,	6:4
35:11 37:7,	<b>headlights</b>	12,24 39:2,	<b>involving</b>
23	46:21	13,16,19	11:9
<b>grimace</b>	<b>held</b>	40:3,18,21,	<b>issue</b>
47:13,19	28:12 30:17	23 41:3,6,	42:20 44:6
<b>ground</b>	31:4 33:20	14,15,16,18,	
6:23 7:7	<b>highest</b>	24 46:22	<b>J</b>
46:11 47:6,	28:6	47:15,18	
8,12 48:17,	<b>hindsight</b>	48:6,8,12,	<b>jacket</b>
25 49:10	44:17	14,16,19	46:10
50:2,7,18,	<b>hit</b>	50:10,15	<b>job</b>
22,24 51:1,5	38:16 43:24	<b>improper</b>	7:9
<b>grown-ups</b>	45:1 46:7,19	21:18	<b>Jose</b>
43:4	47:5	<b>inches</b>	5:15
<b>guess</b>	<b>Honestly</b>	13:9,11	
18:1	27:19	<b>incident</b>	<b>K</b>
<b>guilty</b>	<b>hood</b>	6:4 11:8	
28:1	38:16 50:17,	<b>incidents</b>	<b>keep</b>
<b>guy</b>	20,23	28:2	13:17
25:23	<b>horn</b>	<b>including</b>	<b>kind</b>
	41:7	12:17 19:14	6:23 16:25
<b>H</b>	<b>hour</b>	<b>indicated</b>	40:9
	7:24 18:11	30:5	<b>know</b>
<b>hailed</b>	<b>hours</b>	<b>inferring</b>	6:5,9 7:14,
12:6	26:14	18:1	16,20 8:18
<b>half</b>	<b>How's</b>	<b>injury</b>	10:10 12:10
14:5,7	17:4	5:23	18:6 20:8
<b>halfway</b>	<b>huh-uhs</b>	<b>insane</b>	25:2,4 42:16
37:14	7:20	43:7	47:18 49:25
<b>hand</b>	<b>hurry</b>	<b>inside</b>	
42:17 43:7	45:23	49:10	

Jose A. Alemar  
February 04, 2021

6

	<b>little</b>	42:9,12,21	38:17 39:7,
<b>L</b>	15:12 29:5	43:17	23 40:8,13
	31:24 34:20	<b>making</b>	42:3,9,14
<b>large</b>	43:3	33:12,24	43:1,6 51:19
13:5	<b>located</b>	36:10 42:20,	<b>message</b>
<b>law</b>	25:6 34:9	22	8:6
21:5,8	35:17	<b>maneuvers</b>	<b>middle</b>
<b>laws</b>	<b>location</b>	44:20	32:16 38:15
20:19	24:16	<b>manner</b>	40:15 43:24
<b>lawsuit</b>	<b>long</b>	16:20	<b>mind</b>
7:5 8:20	8:9,13 9:2	<b>Maps</b>	23:21
<b>left</b>	11:18 14:2	30:4,21	<b>minutes</b>
29:12,19	<b>longer</b>	31:13,21	11:23,25
30:5 34:4	10:20	51:16,23	12:16 13:13
47:15	<b>look</b>	<b>mark</b>	26:1 28:3,7
<b>level</b>	24:24	21:17 29:23	<b>misrepresent</b>
13:18	<b>looking</b>	30:13,18	30:7
<b>license</b>	20:14 33:3	<b>marked</b>	<b>mistaken</b>
21:22,25	38:24 39:3,	31:23 32:4	10:8 11:22
27:14,22	13,17,20	51:20,25	13:1,8,11
49:18	<b>lord</b>	<b>matter</b>	27:21 49:11
<b>life</b>	27:13	25:2 45:2	<b>moment</b>
26:21	<b>lost</b>	<b>mean</b>	12:17 19:15
<b>light</b>	36:2	7:16,21 9:23	24:10 28:14,
26:12 29:1,	<b>lucid</b>	11:3 12:4	19 37:18
2,13,17	50:11	41:17 48:7,	39:19 41:15,
32:25 33:7	<b>Lucky</b>	8,13	24
34:3,14,17	25:24	<b>means</b>	<b>moments</b>
35:11,14,24	<b>Lyft</b>	18:5 42:16	32:23
36:8 37:7,9,	9:21,22	<b>meant</b>	<b>morning</b>
13,21,23	10:7,9,15,23	14:18,19	5:19 24:1
38:9 48:21,		<b>medication</b>	<b>motion</b>
22	<b>M</b>	26:22 27:2	21:9 23:7
<b>lighting</b>	<b>madam</b>	<b>medium</b>	42:8,10,13,
26:8	9:5 18:14	48:21	15,21,22,25
<b>lights</b>	22:10 23:11	<b>Meier</b>	<b>motions</b>
32:21,25	29:22 30:12	5:12,20 9:5,	42:24
34:9 46:24	36:16 42:5	8 14:21 15:1	<b>motor</b>
<b>Likewise</b>	43:8 51:19	17:5,9 18:7,	5:24 10:22
7:19	<b>made</b>	14 20:2,25	11:13 23:5
<b>line</b>	43:7 47:24	21:7,12,17	24:5,10,17
32:10 34:12	48:3	22:9 23:11,	26:9 27:11
<b>Linzy</b>	<b>make</b>	21 25:20,22	<b>mount</b>
5:22	7:8 21:9	29:9,22	19:19
<b>listen</b>	29:18,19	30:12,18	<b>mouse</b>
20:7 38:21	35:22 37:1	31:1,5 33:4,	31:19
39:10		16,21 36:16	

Jose A. Alemar  
February 04, 2021

7

<b>move</b>	20:22 22:6	32:14 35:15	<b>park</b>
20:2 29:3,9,	23:9 44:4,	38:16 39:15	23:19
11 33:4	11,23 50:13	41:2 43:6	<b>part</b>
38:17 39:7,	<b>observe</b>	49:23,24,25	22:3
24 42:3	35:24 41:1	51:9	<b>part-time</b>
<b>moved</b>	44:25 49:3,	<b>operate</b>	9:22
29:5,7 34:20	12,20	14:14 27:11	<b>particular</b>
<b>moving</b>	<b>observed</b>	<b>operating</b>	21:5
28:14,19	36:8 47:22	10:22 11:13	<b>parties</b>
37:6,18 39:5	50:1	15:17 19:5	7:5
	<b>obtain</b>	20:21 23:4	<b>passenger</b>
	21:25	24:9	18:24 23:18
<b>N</b>	<b>obtained</b>	<b>opinion</b>	<b>passengers</b>
	18:24	44:8,17	41:1
<b>name</b>	<b>obviously</b>	<b>oppose</b>	<b>pavement</b>
5:13,19,22	25:18	42:7	31:11
9:6	<b>occur</b>	<b>opposing</b>	<b>paying</b>
<b>names</b>	25:14 40:23	42:24	41:22
31:16,17	<b>occurred</b>	<b>order</b>	<b>pedestrian</b>
<b>narcotics</b>	11:5,8,9	6:3	11:10,16,20
26:20	25:11 32:24	<b>outside</b>	12:1,18
<b>naturally</b>	39:2,16	51:23	13:14,22
19:16,25	<b>off-the-</b>	<b>OVERZAT</b>	19:15 24:6,
23:17,20	<b>record</b>	15:7 17:2,6,	11,18 25:14
29:15 46:8	28:11 30:16	18 18:8	26:10,15
47:17 48:6,	31:3 33:19	20:22 21:3,	28:5,15,20
7,11,13,17	<b>officers</b>	9,13 22:6	35:25 36:9
<b>need</b>	49:16,24	23:8 25:17,	37:8,9,12,20
8:5,14 27:7	<b>okay</b>	21,24 28:10	38:14 40:1,
<b>Never</b>	6:1,9,10,19,	29:25 30:15	7,22 44:15,
26:21	24,25 8:2,3,	33:18 40:10	21 48:20,23
<b>nonresponsive</b>	14,15,23	42:7,12,19	50:16
20:3 29:10	10:15 11:18	43:5 44:4,	<b>pedestrians</b>
38:18 39:8,	15:12,13	11,16,22	29:1,7
24 42:4	17:1,7 18:23	50:12	34:21,24
<b>Notary</b>	20:6,8,9		35:5,7,15,23
5:8	24:2,3,16	<b>P</b>	41:23
<b>number</b>	28:13 31:17		<b>pending</b>
31:9 51:15	38:22 46:15	<b>pain</b>	8:10 40:11
<b>numbers</b>	<b>once</b>	47:8 48:4,5,	<b>person</b>
31:19	29:2 37:22	17	7:11 25:19
	<b>one</b>	<b>paint</b>	39:21 41:20
<b>O</b>	7:11 8:17	32:15 34:5	43:22 44:25
	13:10 16:9	<b>papers</b>	46:1,7,19
<b>object</b>	19:19 20:10	49:17	47:5
17:3 42:14	23:17 27:16	<b>paramedics</b>	<b>personal</b>
<b>objection</b>	30:11,19	49:9	5:23
15:7 17:18			



Jose A. Alemar  
February 04, 2021

8

<b>pharmacy</b> 25:12	<b>point</b> 8:4 27:15	<b>provide</b> 6:15	<b>rascals</b> 43:3
<b>phone</b> 8:5 12:21 13:3 14:24 17:16 19:17, 19 20:12 23:6	28:23 37:5 40:3 41:2 47:14 49:19 50:21	<b>provided</b> 24:14	<b>rate</b> 28:6
<b>phones</b> 20:20	<b>points</b> 28:2	<b>providing</b> 6:14	<b>Raul</b> 6:12,17 17:9
<b>photo</b> 30:23 51:23	<b>police</b> 24:24 49:21	<b>Public</b> 5:8	<b>read</b> 14:17 15:3,5 18:15,19 22:10,13 23:12,15 27:9 36:2,5, 17,21 38:3,6 43:9,12
<b>photograph</b> 31:7,13,22, 25 32:3,17 51:14,21,24	<b>portion</b> 20:3 29:10 38:13,18 39:8,25 42:4 49:13	<b>purposes</b> 6:7 8:19	
<b>photographs</b> 29:23	<b>position</b> 43:21 44:2	<b>pursuant</b> 6:3	<b>ready</b> 8:24
<b>picture</b> 30:6 31:8	<b>possible</b> 7:9 40:25	<b>put</b> 42:16 49:12	<b>recall</b> 27:19
<b>pictures</b> 30:3	<b>potential</b> 12:7 20:14	<hr/> <b>Q</b> <hr/>	<b>receive</b> 16:13,20 23:19
<b>pillar</b> 32:20 34:4	<b>practically</b> 13:18	<b>question</b> 6:13 8:10, 12,21 15:5, 10 16:5 17:1,4,19,24 18:9,15,19 20:6,7,23 21:20 22:8, 10,13,23 23:15 26:1 33:6 35:16 36:5,15,18, 21 37:15,16 38:1,6,20,21 39:11 40:11 43:9,12,15 44:5,12	<b>received</b> 16:17
<b>pillars</b> 32:15	<b>preparation</b> 24:22		<b>receives</b> 23:17
<b>place</b> 5:25	<b>prescription</b> 26:22 27:2		<b>recess</b> 23:23
<b>placing</b> 49:14	<b>present</b> 27:12 40:17		<b>record</b> 5:14 6:18,24 9:6 28:10 29:25 30:15 31:2,5 33:17,21
<b>Plaintiff's</b> 29:23 30:19, 20 31:23 32:4,11 33:25 34:8 51:20,25	<b>pretend</b> 6:8	<b>questions</b> 5:3 6:3,12 7:15 8:17 16:23 38:22	<b>recording</b> 42:22
<b>please</b> 5:13 6:11 8:17 14:17 15:3 17:1,10 20:6 22:8,10 23:3,10,12 29:24 33:22 36:15,17,19 37:25 38:21 39:10 40:11 43:9	<b>prior</b> 11:19,25 13:13 14:3 26:14 40:3 41:3,6,14	<b>quickly</b> 39:5	<b>refer</b> 30:2
	<b>problem</b> 8:9 17:11,19	<hr/> <b>R</b> <hr/>	<b>referred-to</b> 15:4 18:18 22:12,22 23:14 36:4, 20 38:5 43:11
	<b>proceed</b> 43:4	<b>radio</b> 13:19,25	<b>referring</b> 11:2,8
	<b>proceeded</b> 12:13	<b>ran</b> 43:23	<b>remain</b> 19:1 48:24
	<b>professional</b> 22:16 23:1 43:2		
	<b>prohibition</b> 20:19		

Jose A. Alemar  
February 04, 2021

9

50:17,22	<b>review</b>		<b>short</b>
<b>remainder</b>	24:21	<b>S</b>	23:23
7:5	<b>rhetical</b>		<b>shoulders</b>
<b>remained</b>	16:25 17:3	<b>safe</b>	7:20
20:13	<b>ride</b>	19:4 47:21	<b>show</b>
<b>remember</b>	19:2	<b>saying</b>	7:18,22
50:5	<b>ride-sharing</b>	10:7 16:25	<b>shrugs</b>
<b>repeat</b>	10:17	47:23	7:19
22:8 23:10	<b>right</b>	<b>says</b>	<b>side</b>
36:14 38:8	13:17 14:4,	30:20 31:7	13:18 32:2,8
<b>repeated</b>	19 18:8	51:17	34:3,4,6
45:22	21:12 26:5,7	<b>scene</b>	35:18 37:14
<b>rephrase</b>	29:12,19,20,	49:1	40:19 45:13
8:19 15:11	21 31:15	<b>screen</b>	<b>sign</b>
18:17	32:8,19	13:18 51:12,	15:18 32:8
<b>report</b>	33:8,12,15,	13	35:17
24:25	24 34:3,6	<b>season</b>	<b>signed</b>
<b>reporter</b>	35:6 40:19	26:13	15:14
7:1 9:5,7	51:11,16,22	<b>second</b>	<b>simple</b>
15:6 18:14,	<b>right-hand</b>	19:13 31:2	38:21
20 22:11,14	32:1 33:12	33:17 37:19	<b>sir</b>
23:12,16	35:22 36:11	39:15	5:19 6:9,24
29:22 30:13	37:2	<b>seconds</b>	8:2,14,22,
32:6 36:6,	<b>right-of-way</b>	38:23 39:1,	24,25 9:9,
17,22 38:7	35:8	4,12	16,25 10:5,
42:6 43:8,13	<b>rings</b>	<b>section</b>	11 11:1,7
51:19	8:5	21:5	12:4 14:2,9,
<b>represent</b>	<b>road</b>	<b>see</b>	11,20 15:12,
5:21	22:5 23:3	25:1 27:6	14,22 16:1,
<b>require</b>	32:10	30:23 31:6,	6,12,15,22
16:8 18:25	<b>rolled</b>	9,10,12,18,	17:1,13
<b>required</b>	51:1	25 32:1,7,	18:23 19:4,
15:23 27:10	<b>Rosenbaum</b>	14,20 34:8	11,21 20:5,
<b>resided</b>	5:21	37:8,13,20	8,10,18
9:2	<b>rules</b>	38:9 40:1,23	21:21 22:20
<b>respect</b>	6:23 7:7	47:13,25	23:25 24:14,
23:4	15:16 16:1	51:11,13,15	21,25 25:5,
<b>responses</b>	19:7,9,12,21	<b>self-employed</b>	6,13,25
7:15	20:11 22:4	9:15,17	26:18,25
<b>responsible</b>	23:2	<b>several</b>	27:5,6,12,14
44:2	<b>ruling</b>	25:10 45:22	28:3,13,24
<b>rest</b>	21:18	<b>Shaarille</b>	29:11,17
21:10 46:5	<b>run</b>	5:22	30:23 31:6,
51:4	41:20	<b>shake</b>	12,16,22
<b>restroom</b>	<b>running</b>	7:17	33:5,23
8:7	39:6 45:12	<b>shift</b>	35:16,21
		23:25	37:5,15
			38:1,12,20

Jose A. Alemar  
February 04, 2021

10

39:10,15,19	<b>stayed</b>		<b>testimony</b>
40:1,5 41:6,	13:4 47:12	<b>T</b>	6:22 24:13,
11,17,22	<b>stop</b>		22
43:15,17	35:4	<b>tablet</b>	<b>text</b>
44:1,9,13,	<b>stopped</b>	12:21,22,25	8:6
19,25 46:17	12:11 28:9,	13:2,4,6,15,	<b>thank</b>
47:1,22	22 33:7	23 14:14	9:8 17:12
48:8,11,18	34:2,3,13,	15:20 17:17,	27:13 42:25
50:9,15,23	21,25 35:23	22 18:2,5	46:16
51:8,12	<b>straight</b>	19:18 20:12	<b>thing</b>
<b>situated</b>	29:12,18	23:5	18:10 30:24
13:15	38:25	<b>tablets</b>	37:3
<b>situation</b>	<b>street</b>	20:20	<b>think</b>
35:7	26:2 31:10,	<b>take</b>	10:8 13:8,10
<b>slam</b>	16,17 34:25	7:14 8:5,11,	20:5 33:5
41:10,13	35:2,20	13 21:24	51:10
<b>smoothly</b>	43:24	23:22 27:1	<b>three</b>
7:25	<b>stretcher</b>	<b>taken</b>	9:3 14:4
<b>solemnly</b>	49:14 50:3,8	23:2,24 27:3	26:1 28:3,7
5:2	<b>strike</b>	<b>taking</b>	38:23
<b>sound</b>	20:3 29:9	12:10	<b>tickets</b>
41:7	33:4 38:18	<b>talk</b>	27:25
<b>Spanish</b>	39:8,24 42:4	7:13	<b>time</b>
5:1,4 6:6,	<b>struck</b>	<b>taxi</b>	7:11 8:1,4
14,16,17	47:9 48:24	9:14,17	10:10,19
<b>speak</b>	49:20	10:22 16:2	12:15 26:9
6:6 8:7	<b>subtract</b>	<b>tears</b>	27:12,15,16
<b>speaking</b>	14:6	47:25	28:1,23
7:11	<b>subway</b>	<b>telephone</b>	35:13 37:5,
<b>specifically</b>	32:9	18:4	17,22 40:3,
9:17 15:20,	<b>sunny</b>	<b>tell</b>	18 41:3,8,16
21	26:13	17:25 19:11	42:10,15
<b>speed</b>	<b>sure</b>	23:3 33:2	44:24 46:22
28:6,8	7:8 23:11	43:18,19	47:14,15
<b>spoke</b>	33:18 43:17	46:5 49:15	49:16,19
49:24	<b>surprise</b>	<b>temperature</b>	50:21
<b>start</b>	41:9,18	46:11	<b>times</b>
10:25 20:1	<b>suspended</b>	<b>ten</b>	13:2,3 45:22
<b>started</b>	27:15,16,22	11:22,25	<b>today</b>
14:9 37:6,17	<b>swore</b>	12:16 13:13	6:2,7 7:16,
<b>state</b>	5:2	27:20,23	21 24:22
5:9,13 22:1	<b>sworn</b>	<b>test</b>	27:7
<b>station</b>	5:7	21:25 22:3	<b>today's</b>
34:23		23:2	6:8,22
<b>stay</b>		<b>testified</b>	<b>told</b>
16:8		5:10 24:4	13:24 19:23
			45:11,18

Jose A. Alemar  
February 04, 2021

11

46:14,17	turns	understanding	25 8:1,7,11
top	35:15	21:8 22:4	21:15 31:17
30:5 39:22	two	23:4 35:6	37:11
Totally	14:6,7 39:1,	understood	wanted
50:14	4,12 40:16,	8:21 20:6	46:9
touching	20 41:2	33:6	warm
19:17	51:10		46:9
traffic	two-minute	v	waste
20:19 35:10,	23:22		21:10
12,25 36:9	type	vehicle	wasted
41:24	25:7	5:24 10:22	18:12
train	typing	11:13 12:17	watch
12:11 34:22	7:2,6	19:5 20:19,	15:23
transcribe		21 23:5,6,19	watched
7:11	U	24:5,10,17	15:19
transcript		25:14 26:10	wave
7:3,4,18,22	Uber	27:11 28:14,	42:18
translate	9:14,18,21	19 29:3,8,11	way
5:2 6:13,17	10:13,16,23,	33:3 34:19	16:16 17:24
17:10 36:19	25 11:14,19,	37:6,18	wear
translator	24 12:15,20,	38:13 40:2,	27:10
36:18	24 13:6,16,	22 41:21	wearing
traveling	21 14:3,4,9,	47:9 48:19	27:6
26:3	12,13,19,23	49:18,21	Westchester
trial	15:15,17,23,	50:16 51:4	12:12 26:5
42:10,15	24 16:2,7,17	vehicles	30:11,25
try	17:14,15	41:23	white
7:12	18:24,25	verbal	36:24 37:4,
trying	19:6,8,12,23	7:15	10,22
17:25 45:18	20:11,16	videos	wife
turn	22:17 24:12	15:19,22	18:10
26:6 29:16,	Uber's	volume	witness
21 33:13,14	16:1	36:13	5:6 21:6
35:22 36:11,	uh-huhs		30:3 43:10
23 37:2,21	7:20	W	witness's
turned	uncomfortable		38:19 39:9,
11:5,14	48:5	wait	25 42:5
16:14,16,21	underneath	29:16	woman
17:16 19:13	42:17	waited	5:22 47:7
24:12 29:13	understand	34:21 49:5	49:20
34:17 35:11	8:17 15:9	waiting	word
36:13 37:7,	16:4,24	12:6,12 37:1	30:7 31:12
23 38:11	17:23 20:8	41:20	work
46:24	21:14 30:2	walk	9:21
turning	43:2,18	35:17	worked
33:10,12	48:10,15	want	9:14,18
35:6		6:8 7:14,23,	10:4,12 11:6

Jose A. Alemar  
February 04, 2021

12

**working**

10:20,25

16:10 17:14

20:1

**written**

21:24

---

**Y**

---

**years**

9:4 14:5,6,7

22:17,19,20

27:21,23

**yellow**

32:15,20

34:5

**yes-or-no**

37:16

**York**

5:9,18 22:1

---

**Z**

---

**zoomed**

31:24

